IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19063 of 2002

Between:

M/s. Balajnagar Housing Board Colony Welfare Association,

Rep., by its President Sri N.Anji Reddy,

S/o. N.Chandra Reddy,

MIG.H.No. 177, APHB, Balajinagar Colony,

Kukatpally, Hyderabad-72

..... PETITIONER

AND

1. The Commissioner,
Kukatpally Municipality
Moosapet, Hyderabad

2. The Chairman, Kukatpally Municipality,

Moosapet, Hyderabad.

3 Andhra Pradesh Housing Board, Rep. By its Superintending Engineer, North Zone, Bharatnagar Colony, Moosapet, Hyderabad

4 The Hyderabad Urban Development Authority, Begumpet, Hyderabad rep. By its Vice Chairman.

5 The Controller,

AP Pollution Control Board

Hyderabad.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction more in the nature of Writ of Mandamus declaring that the action of the Respondents 1and 2 in establishing graveyard in Balajinagar colony in the site earmarked for the park/play ground is illegal, arbitrary exercise of the power, unconstitutional and without Jurisdiction consequently declare that the resolution passed on 28/08/2002, on agenda item No. 138/1332 a null and void.

For the Petitioner:MR.K. Vijayakumar Reddy, Advocate for Sri E.AYYAPU REDDY

For the Respondent Nos. 1 and 2: Sri V. Viswanatham, Advocate :Not present.

For the Respondent No.3: MR.J.PRABHAKAR –Not present

For the Respondent No.4: Sri V. Viswanatham, Standing Counsel:Not present.

For the Respondent No.5: S.V. Bhat, Standing Counsel for A.P.P.C.B.

The Court Made the Following :

Oral Order: (per Sri Devinder Gupta, CJ)

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Petition filed as 'Public Interest Litigation' by M/s. Balaji Nagar Housing Board Welfare Association, represented by its President, espousing the cause of the Residents Welfare Association and thereby questioning the action of the respondents 1 and 2 in establishing graveyard in Balajinagar Colony in the site, which according to the petitioner is ear-marked for park/playground as illegal, arbitrary and without jurisdiction and to declare Resolution of the Kukatpally Municipality dated 28.8.2002 for establishment of grave yard and crematorium in Balajinagar as null and void.

Petitioners have alleged that the 4th respondent by its revised approved lay out

Permit No. 14213/91, dated 16.11.1993 and Permit dated 24.7.197 approved draft lay out of the 3rd respondent. The total area covered by the lay out is 48.282 acres, in which Ac.4.835 was provided for parks and playgrounds and an extent of Ac.1.951 was provided for amenities. It is further pleaded that the colony consists of about 800 houses with a population of about 4,000 and it came to the notice of the Welfare Association that the respondent Municipality was proposing to establish graveyard and crematorium for which a sum of Rs. 2.50 lakhs was sanctioned. Petitioner association in order to clear its suspicion wanted to know about the site reserved for the said purpose and it was informed that open site to the extent of Ac.3327.22 sq. yards, which was kept apart for development of park in the approved lay out plan surrounded by MIG and LIG houses was sought to be converted into graveyard and for establishment of crematorium.

While issuing show cause notice, this Court suspended the operation of the resolution passed by the 2nd respondent Municipality. Despite service, there has been no response from the respondents 1 and 2.

Affidavit in reply has been field by A.P. Pollution Control Board almost supporting petitioners' stand that the proposed graveyard is an open site surrounded by residential houses. It was further stated that establishment of proposed graveyard in residential area will definitely pose air pollution problems to the residents of the colony. It was further stated that in the draft lay out the area has been reserved for parks and playgrounds.

Petitioner has supported the petition on an affidavit and also has appended a copy of the approved lay out plan. Certain open areas in the lay out plan have been shown as reserved for amenities and the area in an extent of 3327.22 sq.yards, which is left open towards Northern side is locally surrounded by three sites, all residential houses.

In the absence of any counter affidavit, we have to accept the version of the petitioner that this open area is reserved for development of parks and is not reserved for graveyard or for establishment of crematorium. In any case, in the absence of respondent-Municipality justifying its action, we must proceed on the basis of the reply affidavit of A.P. Pollution Control Board that establishment of graveyard in the residential area would cause environmental problems and for that reason, we are inclined to allow the petition.

The writ petition is allowed and action of the respondents 1 and 2 in proposing to establish grave yard in the area ear-marked for park is held to be illegal and set aside with a direction to the respondents not to allow the said area to be used as grave yard or for the purpose of cremation of the bodies.

DEVINDER GUPTA,CJ

DATE: 7th July, 2004

G. ROHINI,J

pnb

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the seventh day of July, two thousand and four.

ASSt. REGISTRAR

To

1. The Commissioner,
Kukatpally Municipality
Moosapet, Hyderabad

2. The Chairman, Kukatpally Municipality,

Moosapet, Hyderabad.

3.The Superintending Engineer, Andhra Pradesh Housing Board, North Zone, Bharatnagar Colony, Moosapet, Hyderabad

4 The Vice Chairman, Hyderabad Urban Development Authority, Begumpet, Hyderabad.

5 The Controller,

AP Pollution Control Board

Hyderabad.

6.Two C.D. copies